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EXAMINER

DANG, HUNG Q

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 06/30/2009 have been fully considered but they are not persuasive.

On page 7, Applicant argues that the cited references fail to teach or suggest all the limitations of claims 1 and 12. In response, Examiner respectfully disagrees. Ito clearly teaches the retrying process by a predetermined number of times for one type of data at least in Fig. 3 and in [0015], [0066]-[0068] while Hirata discloses the retrying process for a predetermined period of time for another type of data at least in column 6, lines 18-25, column 7, lines 20-52, Fig.5, and Fig. 6. The combination of Ito and Hirata as described in the last Office Action discloses all the limitations of the claims in contrast with Applicant's arguments.

Also on pages 7-11, Applicant argues that since Ito repeatedly teaches omitting any retry process in the YES branch of step B15 shown in Fig. 3, Ito teaches away from the claims and therefore cannot be combined with Hirata.

In response, Examiner respectfully disagrees.

Examiner believes that when a reference that discloses doing A without doing B teaches away from doing B only if (1) B simply cannot be incorporated because the disclosed structure physically, practically, theoretically, or economically prohibits such a modification or incorporation or (2) incorporating B leads to A being impossible to be implemented either functionally or structurally, or A being destroyed.

Apparently, this is not the case with Ito and Hirata.

In Ito, the retrying process following the "YES" branch in Fig. 13 is taught to be omitted simply to save processing time. Clearly, the retrying processing of data, which is not determined to be D-data, simply is not a priority in Ito teachings and is implied to be an option. In other words, omitting of such a retrying process is **not an obligation**. One skilled in the art would recognize that Ito's omitting such a retrying process could provide both advantages and disadvantages. A clear advantage is saving processing time as suggested by Ito. Equally, a disadvantage of skipping such a retrying process is that it would lead to less reliability of such data.

Therefore, one of ordinary skill in the art would recognize that a compromised solution is to implement a retrying process for the data as well but only for a predetermined amount of time. The predetermined amount of time could be determined so that the retrying process could provide a level of reliability instead of none and at the same time preserves the quality of recording and reading continuities of the data.

Hirata discloses such a retrying process of such data as clearly described in the last Office Action. Hirata further also suggests implementing such a process in column 9, lines 1-5, in which it states, "... the reading and writing command can be completed within the predescribed time required for the data such as the image data and the audio data of which the processing in real time is important..."

As such, the motivation for the combination of Ito and Hirata is obvious to one of ordinary skill in the art.

The rejections are therefore maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hung Q. Dang whose telephone number is (571)270-1116. The examiner can normally be reached on IFT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI Q. TRAN can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hung Q Dang/
Examiner, Art Unit 2621

/Thai Tran/

Supervisory Patent Examiner, Art Unit 2621